

This letter discusses sales tax issues related to the sale of skin care products by a dermatologist. Skin care products generally do not qualify for the 1% rate of tax as medicine unless they purport on the label to have medicinal qualities. See 86 Ill. Adm. Code 130.310. (This is a GIL).

March 28, 2003

Dear Xxxxx:

This letter is in response to your letter dated June 30, 2002 and your fax dated February 13, 2003. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120 subsections (b) and (c), which can be found at <http://www.revenue.state.il.us/legalinformation/regs/part1200>.

In your letter, you have stated and made inquiry as follows:

Based on the following facts and circumstances and existing law, I respectfully request the State's position regarding the applicability of transaction privilege (sales) or use tax to sales of skin care products to physicians who resell the same to their patients.

Specifically, Company A, which has its principal place of business in STATE, sells skin care products through a variety of channels, including, but not limited to salons and dermatologists in Illinois. Dermatologists purchasing Company A's products dispense the same to their patients in connection with treatment of various skin conditions. The Company A products dispensed by the dermatologists include such products as exfoliating body scrub, sunscreens, a face cream that firms and moisturizes the face and provides antioxidant treatment to dry mature skin, a clay masque formulated with hydroxy acids, emollient, and self-tanning lotion. No formal prescription is provided; i.e., the patients would not otherwise have to obtain the products through a pharmacist. They merely obtain Company A's products from their doctors for use as instructed and pay for the same accordingly.

As dermatologists dispense the products to their patients as a part of or incidental to treatment, it has occurred to us that there might be an exemption for the skin care products in question. We would be appreciative if you would provide an opinion regarding the existence of any exemptions. If an exemption exists for Company A's products please let us know what procedures, if any, need to be followed to document the exemption.

We look forward to receiving your response to our inquiry. Please forward the same to my attention.

Thank you very much for your attention to this matter.

We have enclosed a copy of 86 Ill. Adm. Code 130.310 regarding the taxation of Food, Drugs, Medicines and Medical Appliances. As you can see from the regulation, food that is to be consumed off the premises where it is sold (other than alcoholic beverages, soft drinks, and food that has been prepared for immediate consumption), prescription and non-prescription medicines, drugs, and medical appliances are subject to a low rate tax: 1% plus applicable local taxes, under the Retailers' Occupation Tax Act. Items that do not qualify as food, drugs, medicines and medical appliances are subject to the basic State rate of tax, which is 6.25% plus any applicable local taxes.

A medicine or drug is defined as any pill, powder, potion, salve, or other preparation intended by the manufacturer for human use and which purports on the label to have medicinal qualities. A medical appliance is defined as an item which is intended by its manufacturer for use in directly substituting for a malfunctioning part of the body. See part (c) of Section 130.310. Medical devices that are used for diagnostic or treatment purposes do not qualify for the lower tax rate.

Without further information about the products, it is hard for us to answer your question. Skin care products generally do not qualify for the low rate of tax unless they purport on the label to have medicinal qualities. For example, suntan products including sunscreen generally are subject to the high rate of tax regardless of their SPF rating. However, this could change if the label purported that the product had medicinal qualities. Soaps and other chemicals may qualify for the low rate if they are intended by the manufacturer for human use and purport on the label to have medicinal qualities. Please note, however, that the use of the term "antibacterial" on a soap wrapper, if limited to a claim that the product kills germs in general, does not constitute a medicinal claim. A claim that the product is for use as an antiseptic to kill germs to prevent infection in cuts, scrapes, abrasions and burns does constitute a medicinal claim. See 86 Ill. Adm. Code 130.310(c)(1)(B).

All gross receipts from the sale of tangible personal property are subject to Retailers' Occupation Tax unless specifically exempted. A reduction from the regular sales tax rate of 6.25% is allowed for medicines and medical appliances. Qualifying medicines and medical appliances are taxed at the lower rate of 1%, plus applicable local taxes. See the enclosed copy of 86 Ill. Adm. Code 130.310.

Physicians and surgeons are primarily engaged in professions that render services. To the extent they are engaged in such professions and are not engaged in the business of selling tangible personal property to purchasers for use or consumption, they are not required to report and remit Retailers' Occupation Tax measured by their receipts from engaging in such professions. Please note, however, that if physicians make over-the-counter sales of tangible personal property, that is otherwise available at retail, those sales will be subject to Retailers' Occupation Tax liability.

The fact that physicians and surgeons are not subject to Retailers' Occupation Tax on the sale of tangible personal property transferred incident to the rendering of services does not mean, however, that such professionals are not liable for remitting any sales tax on the sale of such property. The Service Occupation Tax Act is imposed upon the tangible personal property transferred as an incident of the sale of service. See the enclosed copy of 86 Ill. Adm. Code 140.101, the Basis and Rate of the Service Occupation Tax. Therefore, when a dermatologist transfers tangible personal property to a patient incident to his rendering dermatological services, such as when collagen injections are administered to the patient, the dermatologist will be subject to the Service Occupation Tax, rather than the Retailers' Occupation Tax.

The purchase of tangible personal property that is transferred to service customers incident to the sale of service will result in a sales tax liability, either in the form of Service Occupation Tax liability or Use Tax Liability for the serviceman, depending upon which tax base the serviceman chooses to calculate his liability. Servicemen may calculate their tax base in one of four ways: (1) separately stated selling price; (2) 50% of the serviceman's entire bill; (3) Service Occupation Tax on his cost price if he is a registered de minimis serviceman; or (4) Use Tax on cost price if the servicemen are de minimis and are not otherwise required to be registered under Section 2a of the Retailers' Occupation Tax Act.

Thus, the sales of tangible personal property made incident to the services you render in your dermatology practice are subject to sales tax, whether that be at the regular 6.25% sales tax rate, plus applicable local taxes or at the reduced 1% rate, plus applicable taxes. If you remit Service Occupation Tax on such sales using any of the first three methods listed above (i.e. separately stated selling price, 50% of the entire bill to your service customers, or as a registered de minimis serviceman, on the cost price of the tangible personal property transferred), then you may present a Certificate of Resale to your supplier and the transaction between you and your supplier will be nontaxable, as the sale is considered a sale for resale and the tax is imposed when the sale of tangible personal property incident to the sale of service is made. If, however, you are eligible to calculate your tax liability under the fourth method, as a non-registered de minimis serviceman, you must pay Use Tax to your supplier on your cost price of the items to be transferred with service. Unregistered de minimis servicemen cannot claim the transaction as a sale for resale, and therefore, the transaction is taxable and the supplier must collect the Use Tax. If the supplier does not collect Use Tax, then you must remit the Use Tax to the Department.

I hope this information is helpful. The Department of Revenue maintains a Web site, which can be accessed at www.revenue.state.il.us. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of the enclosed copy of Section 1200.110(b).

Very truly yours,

Martha P. Mote
Associate Counsel

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Enc.